

*Sub D3*

21. 26. (amended) A communications cable comprising:  
a cable jacket;  
a spacer extending within said cable jacket, the spacer being formed of and having an outer surface of a polymeric material and having a longitudinally extending center portion and plurality of longitudinally extending wall portions radiating from said center portion, the longitudinally extending wall portions including a first section having a first thickness, a second section having a second thickness and a third section having a third thickness, the third thickness being different from the first and second thickness, the third section located between the first section and the second section, the spacer and the cable jacket defining a plurality of compartments within the cable jacket; and  
a twisted pair of insulated conductors disposed in at least one of the compartments.

#### REMARKS

##### **I. Status of the Claims**

At the time of the Action, Claims 5-13, 16, 17, 25, 26, 40 and 41 were pending. Claims 9-12, 40 and 41 are allowed, and Claims 8, 16 and 17 are indicated to recite allowable subject matter, but are objected to for depending upon a rejected base claim. Claims 5 and 6 stand rejected under Section 102(e) as anticipated by U.S. Patent No. 6,297,454 to Gaeris (Gaeris). Claims 13, 25 and 26 stand rejected under Section 102(b) as anticipated by Japanese Patent Publication No. 4-332,406A to Ikeda et al. (Ikeda). Claim 7 stands rejected under Section 103(a) as obvious based on Gaeris in view of U.S. Patent No. 5,969,295 to Boucino et al. (Boucino). These rejections are addressed hereinbelow.

##### **II. Rejections Based on Gaeris**

The Action cites Gaeris as anticipating the elements of Claims 5 and 6 and, in combination with Boucino, rendering Claim 7 obvious. Applicant respectfully directs the Examiner's attention to the Rule 131 Declaration of Thomas J. Boucino (the Boucino Declaration), the named inventor of the present application, a copy of which is submitted concurrently herewith. The Boucino Declaration demonstrates that the subject matter of Claim 5 was clearly conceived at least as early as May 16, 1997, the date shown on Exhibit A to the Boucino Declaration (the drawing of the tool die for a spacer that meets the recitations of Claims 5-7). The Boucino Declaration also indicates that a cable meeting the recitations of Claims 5-7 was produced at least as early as June 26, 1997, the date shown on Exhibit B of the

Boucino Declaration, which indicates that this embodiment of the invention was reduced to practice by that time.

In order to prove a date of invention prior to the filing date of a reference, Applicant must prove reduction to practice prior to the effective date of the reference. 37 C.F.R.

1.131(b). As noted above, the Boucino Declaration clearly demonstrates that the invention recited in Claims 5-7 was reduced to practice prior to the December 2, 1999 filing date of Gaeris. As such, Applicant respectfully submits that Gaeris no longer qualifies as prior art under Section 102(e); accordingly, Applicant submits that the rejections set forth in the Action based on Gaeris no longer stand, and requests that they be withdrawn.<sup>1</sup>

### **III. Rejections Based on Ikeda**

The Action states that Claims 13, 25 and 26 stand rejected under Section 102(b) based on the disclosure of Ikeda, which is characterized as disclosing all of the elements of these claims. In response to Applicant's arguments set forth in Applicant's response dated 31 August 2001, the Action states that the arguments "are not persuasive because Ikeda does disclose the spacer being formed of a polymeric material (rubber). The conductive material 4 of Ikeda is applied on the surface of the spacer, but the spacer itself is not formed of conductive material."

In response, Applicant respectfully directs the Examiner's attention to amended Claims 13 and 25, which now recite that the outer surface of the spacer is formed of a polymeric material (this recitation is supported by, *inter alia*, Figure 4 of the specification, which shows the spacer, including the outer surface thereof, being formed of a polymeric material). The Action acknowledges that this configuration is not present in Ikeda by stating that "the conductive material 4 of Ikeda is applied on the surface of the spacer." As such, Ikeda cannot anticipate Claims 13, 25 and 26.

In addition, Ikeda fails to render the subject matter of these claims obvious. As discussed in Applicant's prior response of 31 August 2001, the inclusion of a conductive layer on the outer surface of the spacer of Ikeda would provide the cable with very different, and in many instances, very undesirable properties. For example, it can directly affect the cable's impedance, which can in turn degrade attenuation performance. Also, a conductive layer would likely prevent the spacer from having a helical configuration, which is desirable to

---

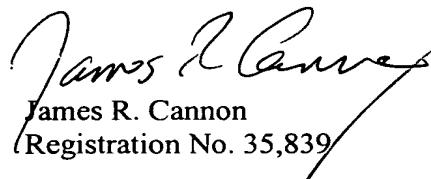
<sup>1</sup> Applicant notes that Applicant's submittal of the Boucino Declaration and reliance thereon to remove Gaeris as a prior art reference does not indicate that Applicant concedes that the subject matter of the reference would otherwise anticipate the subject matter of Claims 5-7. Applicant has chosen to swear behind Gaeris in order to expedite prosecution.

stabilize the geometry of the twisted pairs of cables. As such, Applicant submits that the claimed subject matter satisfies the provisions of Section 103(a) also.

**IV. Conclusion**

Inasmuch as the outstanding issues raised in the Action have been addressed, Applicant respectfully requests that the present application be passed to allowance and issue.

Respectfully submitted,

  
James R. Cannon  
Registration No. 35,839

Myers Bigel Sibley & Sajovec, P.A.  
Post Office Box 37428  
Raleigh, NC 27627  
Telephone (919) 854-1400  
Facsimile (919) 854-1401

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed Commissioner for Patents, Washington, DC 20231, on February 19, 2002.

  
Joyce Paoli  
Date of Signature: February 19, 2002

**VERSION MARKED TO INDICATE CHANGES**

**In the Claims:**

Please amend the following claims.

13. (twice amended) A communications cable comprising:

a cable jacket;

a spacer extending within said cable jacket, the spacer being formed of and having an outer surface of a polymeric material and having a longitudinally extending center portion and plurality of longitudinally extending wall portions radiating from said center portion, the longitudinally extending wall portions having a first radial section that increases in thickness with distance from the center portion and a second radial section that decreases in thickness with distance from the center portion, the spacer and the cable jacket defining a plurality of compartments within the cable jacket; and

a twisted pair of insulated conductors disposed in at least one of the compartments.

25. (twice amended) A communications cable comprising:

a cable jacket;

a spacer extending within said cable jacket, the spacer being formed of and having an outer surface of a polymeric material and having a longitudinally extending center portion and plurality of longitudinally extending wall portions radiating from said center portion, the longitudinally extending wall portions including a first section having a first thickness, a second section having a second thickness and a third section having a third thickness, the third thickness being different from the first and second thickness, the third section located between the first section and the second section, the spacer and the cable jacket defining a plurality of compartments within the cable jacket; and

a twisted pair of insulated conductors disposed in at least one of the compartments.